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1 THE COURT: We're here this afternoon in Criminal
2 Action H-12-272. The primary purpose of this conference was
3 to determine and receive a status report from the Government
4 concerning the death-eligible defendants. I am going to
14:02 5 call by name the death-eligible defendants and ask their
6 attorneys to identify themselves. Then any other attorney
7 can identify him or herself.

8 Larry Max Bryan.

9 MR. STAFFORD: James Stafford, Your Honor.

14:02 10 THE COURT: Kelly Ray Elley.

11 MR. ODOM: Wendell Odom and Neil Davis.

12 THE COURT: Michael Richard Lamphere.

13 MR. ESSMYER: Mike Essmyer and Trent Gaither, Your
14 Honor.

14:02 15 THE COURT: Jamie Grant Loveall.

16 MR. WENTZ: Kurt Wentz and John Parras.

17 THE COURT: William David Maynard.

18 MS. MALLET: Edward Mallett, Your Honor.

19 THE COURT: David Orlando Roberts.

14:03 20 MR. FICKMAN: Robert Fickman, Your Honor.

21 THE COURT: James Erik Sharron.

22 MR. MCGUIRE: Ken McGuire and Ali Fazel, Your
23 Honor.

24 THE COURT: Sammy Keith Shipman.

14:03 25 MR. LAMBRIGHT: Don Lambright.

1 THE COURT: Brian Lee Thomas.

2 MR. BOURQUE: Gerald Bourque and Robert Morrow.

3 THE COURT: And Steven Worthey.

4 MR. MOSBACKER: Mervyn Mosbacker and Lourdes

14:03 5 Rodriguez. She is not present.

6 THE COURT: Pardon me?

7 MR. MOSBACKER: Miss Rodriguez is not present. She
8 contacted me.

9 THE COURT: That's fine.

14:03 10 All right. Now any other counsel may identify
11 themselves.

12 MR. REED: Good afternoon, Your Honor. Erik Reed
13 for Ronald Prince.

14 MR. EASTEPP: Larry Eastepp for James Sampsell,
14:03 15 Your Honor.

16 MS. JANA: Sue Jana for Billy Seay, Your Honor.

17 MR. SAPER: Gus Saper for Terry Blake.

18 MR. MARTIN: Tom Martin for Fredrick Michael
19 Villarreal.

14:03 20 MR. WILSON: Lee Wilson for James Lawrence Burns.

21 MS. DeBORDE: Nicole DeBorde for Kenneth Hancock.

22 MR. HAMM: Lance Hamm for Tammy Wall.

23 MR. PODOLSKY: Brent Podolsky for Clay Kirkland.

24 THE COURT: Now the Government can announce its
14:04 25 attorneys.

1 MR. KARPEL: Thank you, Your Honor. David Karpel,
2 Tim Brailey and Ed Gallagher for the United States.

3 THE COURT: Thank you.

4 I received this week notices of intent not to
14:04 5 seek the death penalty against William David Maynard, James
6 Erik Sharron, Sammy Keith Shipman, Larry Max Bryan, Kelly
7 Ray Elley, Brian Lee Thomas and Steven Worthey. So, as to
8 those defendants, we need to adjust the number of attorneys
9 and the compensation rate.

14:04 10 The rules that govern the appointment of
11 counsel in death-eligible cases state that when the death
12 penalty is not sought the court should, absent extenuating
13 circumstances, make an appropriate reduction in the number
14 of counsel and the court should, absent extenuating
14:05 15 circumstances, reduce the compensation rate prospectively
16 only.

17 Of the death-eligible defendants who will not
18 be subject to the death penalty in light of the Government's
19 filing, do any counsel think that the defendant is entitled
14:05 20 to two counsel instead of one; and, if so, why?

21 MR. MORROW: Your Honor, on behalf of Mr. Thomas,
22 Gerald Bourque and I represent him. We would ask the Court
23 to consider leaving two lawyers on the case, one of which
24 would be me, because we have not seen a case this complex
14:05 25 before. We're involved in, I think, four or five counts,

1 including at least one murder, a RICO provision. It's taken
2 both of us to get to this point and there's a lot more work
3 still to do. And although it would be easier for me to get
4 off and leave Mr. Bourque alone, I certainly wouldn't want
14:06 5 to be in his position to have to do this by myself. I think
6 the complexity merits a second lawyer.

7 THE COURT: Let's do this. Anybody who thinks that
8 two lawyers are warranted can file a motion by next Friday,
9 the 27th, explaining the reasons why they think that relief
14:06 10 is appropriate, and the Government will have to until the
11 following -- I don't guess that's an issue the Government
12 would have a say in. Anyway, you can file it by next
13 Friday. But the compensation rate is hereby reduced to \$125
14 per hour effective 5:00 p.m. today.

14:06 15 MR. MORROW: Thank you.

16 THE COURT: Mr. Essmyer.

17 MR. ESSMYER: Yes, Your Honor, because of
18 sequestration --

19 THE COURT: Pardon me?

14:06 20 MR. ESSMYER: -- they dropped it \$15 an hour.
21 Because of sequestration it's now \$110.

22 THE COURT: Okay. Then, it's effective \$110
23 5:00 p.m. today. Thank you for saving the government that
24 money.

14:07 25 MR. MALLETT: We all want to thank Mr. Essmyer.

1 THE COURT: The clerk would have caught it anyway.

2 Mr. Odom.

3 MR. ODOM: A question that I have that relates to
4 this is that a good amount of this discovery requires a
14:07 5 paralegal or a legal assistant to listen to the voluminous
6 number of tapes to go over the evidence. Would that be
7 affected by as the Court notes? Will that be affected by --

8 THE COURT: I think it makes a lot more sense to
9 pay a legal -- Well, are you using paralegals or interns?

14:07 10 MR. ODOM: Well, they're using interns.

11 THE COURT: What are you seeking? \$20 an hour for
12 them?

13 MR. ODOM: 25, yes.

14 THE COURT: Well, I have been approving interns at
14:07 15 20 an hour. What are you actually paying them?

16 MR. ODOM: That's a good question.

17 THE COURT: Are you paying them anything? Do they
18 get the experience of working for Wendell Odom?

19 MR. ODOM: 15? 15 an hour.

14:08 20 THE COURT: \$20 an hour is what they'll be
21 compensated. But, yes, that makes a lot of sense, to let
22 interns listen to the tapes and find the ones that you need
23 to then listen to.

24 When will the Government be in a position to
14:08 25 tell us about the remaining death-eligible defendants?

1 MR. KARPEL: Your Honor, I spoke to the capital
2 committee. They knew that I would be in front of the Court
3 today. They're asking for an additional 60 days. So, our
4 request to the Court is to continue the status 60 days, at
14:08 5 which time we should have the decision with respect to the
6 remaining three defendants.

7 THE COURT: I think we have a scheduling conference
8 in November anyway; so, you should be prepared to have one
9 like November 20th? Let me check.

14:08 10 MR. KARPEL: I don't think we do, Judge.

11 THE COURT: I thought we did.

12 MR. KARPEL: That would work, if --

13 THE COURT: November 20th at 2:00 p.m. we have a
14 conference already set. So, you should know by then.

14:09 15 MR. KARPEL: Yes, Judge.

16 THE COURT: All right. What else can we accomplish
17 now at this meeting of the Harris County criminal defense
18 bar?

19 MR. FAZEL: If it please the Court. Ali Fazel for
14:09 20 Mr. Sharron.

21 Your Honor, there's a couple of sets of
22 discovery that are -- we have been working towards obtaining
23 a format to produce to everybody. The ATF has -- I don't
24 know -- 20-odd boxes of discovery that the Government has
14:09 25 put together that the Government has labeled as what they

1 believe not to be relevant to their prosecution. These
2 things are handwritten correspondence, pictures, magazines.
3 It's just a plethora of things. I have gone and looked at
4 it. It's a collection of items that have been seized either
14:09 5 through search warrants or through other matters of
6 investigation and it's from all over Texas. The government
7 had brought it down to Houston and placed it with the ATF.

8 One of the things that I have been doing is
9 trying to get three copying folks to give us bids on it and
14:10 10 then trying to get all the lawyers involved on our side to
11 agree to having a joint motion before the Court regarding
12 the budget for producing it and then distributing it to
13 everybody. Our thinking is to have it scanned in, put it on
14 hard drives, one set for all defense lawyers that are still
14:10 15 on the case to review as part of the case.

16 THE COURT: How many pages are we talking about
17 here?

18 MR. FAZEL: Your Honor, I left my notes in the
19 office. I apologize. It's a lot. But I think we have got
14:10 20 it down to a number that I think the Court would be happy
21 with. We pretty much got all the copying folks and got them
22 down to something that I think is reasonable.

23 THE COURT: So, you want funds to copy and then
24 scan?

14:11 25 MR. FAZEL: No. No. This would be scanned in and

1 produced on a hard drive, one set per person, and I think we
2 even got them to agree to OCR it so that it's searchable,
3 although OCR, in handwriting, is sometimes a little
4 questionable.

14:11 5 I finally got the last lawyer to respond to me
6 outside. I tackled him and got a "yes" from him. So, I
7 should have a budget in to you by next week, whether I am on
8 the case or not. I will make sure that's done and produced
9 to you since I have been leading that.

14:11 10 THE COURT: Speaking of budgets, whether or not the
11 now non-death-eligible defendants file a motion next Friday
12 seeking two attorneys, I want all of the seven no-longer-
13 eligible attorneys to submit a revised budget by next Friday
14 because these cases don't justify \$480,000 each.

14:12 15 MR. FAZEL: The second question I was going to ask
16 the Court -- We were going to kick the Government out and
17 then have a conversation with the Court, if the Court would
18 allow us, about how to go about doing that. Everybody
19 thinks that a second budget, perhaps, is a good idea,
14:12 20 revised, so that the Court can take a look at it and
21 determine how to deal with that.

22 THE COURT: Well, what I would like you to do is
23 something -- I have a chart that I have prepared -- it's
24 work product and it's copyrighted, of course -- which sets
14:12 25 out how much you requested, how much I approved and any

1 change by Chief Judge Stewart. Whatever format you choose,
2 it would be helpful if you would set out what you requested,
3 what's been approved and what you now want so I can compare
4 and see what the difference is. Otherwise, I have to go
14:12 5 back and read -- This notebook just contains the budget
6 requests.

7 MR. FAZEL: Yes, Your Honor. Okay.

8 THE COURT: You understand?

9 MR. FAZEL: Absolutely.

14:13 10 THE COURT: I'm not dictating the exact format, but
11 what I am really focusing on is the changes, like I wouldn't
12 think we would need a lot of mitigation experts anymore.

13 MR. FAZEL: Correct, although we were going to
14 share a lot of our experts when it came to ABT-type stuff.
14:13 15 And that's under seal; so, I don't want to go into detail
16 about that. But you're correct, Your Honor. All of the
17 litigation work that's been done concerning elements of the
18 PSR objections, should they go to trial, should there be a
19 conviction -- So, yes, Your Honor, I think that --

14:13 20 THE COURT: So, by next Friday you will submit
21 revised budgets if your client is no longer eligible for the
22 death penalty.

23 MR. FAZEL: One other thing. I know the Court
24 never gets involved with plea negotiations, and I appreciate
14:13 25 that, nor am I asking the Court. When it comes to having

1 two lawyers versus one -- and we will certainly memorialize
2 this in a motion -- some of us are pled in cases where it's
3 either death or life, that's it. Like, my client, it's
4 either death or life. That does make -- create an issue
14:14 5 where, unless there is some movement by the charging
6 authority, the incentive to do anything other than try it
7 makes us all scratch our hair. So, I wanted the Court to be
8 aware of that and appreciate that, that we're in a bit of a
9 corner.

14:14 10 THE COURT: Well, I appreciate it, but I don't have
11 any control over it.

12 MR. FAZEL: No. Not at all. But I just wanted
13 to --

14 THE COURT: We have had a number of guilty pleas --

14:14 15 MR. FAZEL: Yes, sir.

16 THE COURT: -- in cases where -- and the guideline
17 ranges were substantial -- will be substantial, probably,
18 under the stipulated factual basis.

19 I don't have my next hearing until 3:00. So,
14:14 20 when I leave, you're welcome to sit around with all these
21 people and, you know, we're open for plea agreements almost
22 any day next week at 11:30.

23 MR. FAZEL: That's all I have, Your Honor.

24 THE COURT: Any other ideas for the good of the
14:15 25 order?

1 All right. Does the Government have anything
2 it wants to share?

3 MR. KARPEL: No, Your Honor.

4 THE COURT: Would you like to sit around and visit?

14:15 5 I mean, you don't need me to talk about everything in the
6 case. Do you want to use the courtroom for the next
7 30 minutes?

8 MR. KARPEL: We're certainly available to talk to
9 any defense counsel.

14:15 10 THE COURT: Has the Government -- What is the
11 Government's position? If the minimum guideline range is
12 life, Mr. Fazel makes a pretty good point, that it's harder
13 to go to the unit and explain why that's a good plea offer.

14 MR. KARPEL: Well, there is a -- there are avenues
14:15 15 by which cooperation could help break that life sentence.
16 So, there is a mechanism built in the statute where one can
17 receive less than a life sentence and a minimum mandatory to
18 life sentence. So, that's discussion worth having with
19 defense counsel.

14:16 20 THE COURT: Okay. Mr. Fazel, I think you have his
21 answer. All right.

22 MR. FAZEL: Their version, yes, sir.

23 THE COURT: I will wait to get the filings next
24 Friday. Unless anybody has any questions, we're adjourned.

14:16 25 Thank you.

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COURT REPORTER'S CERTIFICATE

I, BRUCE SLAVIN, certify that the foregoing is a
correct transcript from the record of proceedings in the
above entitled matter, to the best of my ability.

s/Bruce Slavin
BRUCE SLAVIN, RPR, CMR